

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
HICKS, DAMON,)	CAUSE NO. IP02-0052-CR-01-T/F
)	
Defendant.)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	IP 02-52-CR-T/F
)	
DAMON HICKS,)	
)	
Defendant.)	

ENTRY ON DEFENDANT'S MOTION TO SUPPRESS¹

Defendant filed this Motion to Suppress evidence obtained as a result of the search his car on March 2, 2002. The Government opposes the Motion. For the reasons explained below, this court now **DENIES** Defendant's Motion.

I. Factual and Procedural Background

On March 2, 2002, Indianapolis Police Officer Michael P. Hegg stopped a 1987 Chevrolet Caprice after it failed to signal when turning. Nicole Crutcher-Young was driving the vehicle and admitted to Hegg that she had never had a license. Hegg then issued her a summons for operating a vehicle without receiving a driver's license.

¹ This Entry is a matter of public record and is being made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion to be sufficiently novel or instructive to justify commercial publication of the Entry or the subsequent citation of it in other proceedings.

Damon Hicks was in the passenger seat of the car and admitted to being the owner of the car. However, he also did not have a valid driver's license.

Hegg confirmed this information through a records check and then decided to impound the vehicle because neither Crutcher-Young or Hicks could drive it. This decision conformed with the Indianapolis Police Department's standard operating procedures. In conducting an inventory search pursuant to the impoundment, Hegg found a black Taurus 357 revolver underneath the driver's seat. Hicks admitted that the gun belonged to him. Hicks was later indicted for being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On July 22, 2002, Hicks filed this Motion to Suppress the firearm and statements he made. The Government opposes the Motion. This court now rules as follows.

II. Discussion

Defendant claims that the gun seized from his car and the statements made thereafter must be suppressed because there was no reason to impound the vehicle and therefore, no reason to search it. In support of his contention, Defendant notes that the vehicle posed no threat to the community because it was parked safely on the street. The Government responds that the impoundment of the vehicle was constitutional because it was made pursuant to the standard operating procedures of the Indianapolis Police Department and not based on suspicion of criminal activity.

Both the decision to impound a car and the accompanying inventory search must meet the requirements of the Fourth Amendment. *United States v. Duguay*, 93 F.3d 346, 351 (7th Cir. 1996).² Although there has been voluminous amounts written about the requirements of an inventory search, the requirements for impounding vehicles are less clear. The Supreme Court has authorized impoundment of a vehicle if it is in furtherance of public safety or community caretaking functions. *Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976). There is also some support for the idea that seizures made pursuant to standard police procedures are constitutional. However, the existence of a police policy does not necessarily mean that an action is constitutional.³ The basis of the idea that standard police operating procedures validate an impoundment appears to be a sentence in *Colorado v. Bertine*, 479 U.S. 367, 375 (1987), in which the Court noted that, “Nothing in *Opperman* or *Lafayette* prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.” However, this statement appears to be made in response to a challenge to a search (which is judged by the existence of valid police procedures) and to the allowance of discretion in the police policy, not the policy itself.

²Although *Duguay* recognizes these general principles, it is factually distinct from the current case because, in *Duguay*, the police had no written policy and no rational reason for impoundment.

³For example, if the Indianapolis Police Department in this case had a policy of impounding all vehicles if the driver failed to use their directionals, the impoundment of such a vehicle would seemingly not comport with the Fourth Amendment.

The correct approach appears to be that followed by the Seventh Circuit in *United States v. Balanow*, 528 F.2d 923, 924 (7th Cir. 1976). In that case, the court held that “[t]he ultimate test of the legality of the search and seizure is the reasonableness of the police officer’s conduct.” The existence of a police procedure is a factor to be considered in that analysis, but not the only factor.

In this case, the impoundment of Hicks’ car was reasonable under the circumstances. Hegg pulled over the car after it failed to use a directional. Neither person in the car had a license and therefore, could not drive the car. Hegg followed Indianapolis Police Department regulations allowing for impoundment of vehicles “in which the driver or passenger does not have a valid driver’s license.” (Govt. Ex. 1.) In this case, the car was within one thousand feet of a school, which created a greater risk to both the car and the students that would be passing by the car, depending on what was in the car.⁴ There is no indication that Hegg was using the impoundment as a pretense to search the car and, in fact, Hegg was willing to let go Crutcher-Young with a ticket. Hegg’s actions were eminently reasonable. Therefore, the impoundment and the subsequent search, also

⁴The Defendant relies on *Bartuff v. State*, 706 N.E.2d 225 (Ind. Ct. App. 1999), for the proposition that the police here cannot rely on a community caretaking function to justify the search of the car. In *Bartuff*, the police upheld the impoundment of the car based on the existence of a departmental routine and potential danger to the community, but invalidated the search of the impounded car because it was not conducted pursuant to standard police operating procedures. In this case, there does not appear to be a challenge to the inventory search itself, which in any event, appears to have been done according to police procedures.

pursuant to police regulations, were constitutional and the evidence obtained therefrom should not be suppressed.

III. Conclusion

For the foregoing reasons, Defendant's Motion to Suppress is **DENIED**.

ALL OF WHICH IS ORDERED this 12th day of August 2002.

John Daniel Tinder, Judge
United States District Court

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